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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 50 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

FIBERFILL PLASTICS PVT.LTD.

Appearance:

1. INCOME TAX REFERENCE No. 50 of 1992

MR MIHIR H JOSHI with MR MANISH R BHATT for Petitioner

MR MANISH J SHAH for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 16/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue,

the following question has been referred for our opinion in respect of assessment years 1981-82 and 1982-83 :-

"Whether, the Tribunal is right in law and on facts in directing the ITO to allow deduction of unabsorbed depreciation though no manufacturing activity was carried out in the accounting years relevant to asst. years 1981-82 and 1982-83 ?"

2. We have heard Mr Mihir H Josh, learned counsel for the revenue and Mr Manish J Shah, learned counsel for the respondent-assessee.

3. Our intention has been invited to the decision of the Apex Court in CIT vs. Virmani Industries Pvt. Ltd. & Ors., (1995) 216 ITR 607 wherein the Apex Court has held that the unabsorbed depreciation allowance has not only to be set off against other heads of income in the relevant previous year, but where it is carried forwards it stands on exactly the same footing as the current depreciation. The Apex Court has taken the view that it is not necessary that for availing of the benefit, in the subsequent year the assessee must be carrying on the manufacturing activity to avail of the benefit of depreciation in such subsequent year.

4. Following the aforesaid decision, our answer to the question referred is in the affirmative i.e. in favour of the assessee and against the revenue.

5. The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-